

How the Constitutional Tribunal of Julia Przyłębska is used to solve the PiS government's problems?

	Government's problem / obstacle?	Constitutional Tribunal's solution
1	<p>The amendment to the law on assemblies passed by PiS introducing new, privileged cyclical assemblies for organising, among others, the Smolensk monthly meetings, has been widely criticised and assessed as a restriction of the constitutional freedom of assembly.</p> <p>The President files a motion with the Constitutional Tribunal</p> <p>Cyclical assemblies</p> <ul style="list-style-type: none"> - In December 2016, the parliament passed an amendment to the Law on Assemblies prepared by PiS, which introduces, among other things, a new type of privileged cyclical assembly, the organisation of which is specially authorised by the voivod for three years, with a simultaneous prohibition on the possibility of organising other assemblies at the same place and time. - The regulations were enacted because of numerous counter-manifestations and blockades of the 'Smolensk monthly meetings' organised by PiS. - The amendment was widely criticised by NGOs, the Supreme Court, the Ombudsman, as well as OSCE representatives as early as during the legislative work. - On 28 December 2016, before signing the law, President Andrzej Duda submitted a motion to the Constitutional Tribunal to examine the constitutionality of the amendment to the Law on Assemblies. 	<p>On 16 March 2017, the Constitutional Tribunal held that the new rules privileging cyclic assemblies are constitutional.</p> <p>(Kp 1/17) On 16 March 2017, the Constitutional Tribunal issued a judgment in which it ruled that the provisions introducing the privileging of cyclical assemblies are in line with the Constitution.</p>
2	<p>The individual term of office of members of the National Council of the Judiciary has stood in the way of the completion of Zbigniew Ziobro's reform of the judiciary.</p> <p>Ziobro submits a motion to the Constitutional Tribunal</p> <p>Term of office of members of the NCJ</p> <ul style="list-style-type: none"> - The Prosecutor General filed a motion with the Constitutional Tribunal on the constitutionality of certain provisions of the Act on the NCJ regarding the election of members of the NCJ from among judges and questioned the constitutionality of individual terms of office of the members of the NCJ elected by judges. - Ziobro contested these provisions to legitimise his reform of the judiciary. The Sejm withheld work on it because of doubts raised by President Andrzej Duda regarding the expiry of the term of office of 15 judges of the NCJ. - According to the Polish Constitution, the term of office of the elected members of the National Council of the Judiciary lasts four years. 	<p>On 20 June 2017, the Constitutional Tribunal finds, among other things, that the provision of the Act on the NCJ regarding the term of office of members of the NCJ elected from among judges of the ordinary courts, understood in such a way that the term of office is individual, is unconstitutional</p> <p>(K 5/17) The Constitutional Tribunal passed a judgment on 20 June 2017 in which it held that the provisions of the Act on the NCJ regarding the election of the members of the NCJ from among judges of the ordinary courts and administrative courts are unconstitutional and that the provision of the Act on the NCJ regarding the term of office of the members of the NCJ elected from among judges of the ordinary courts understood as meaning that the term of office is individual, is unconstitutional.</p>
3	<p>The President exercised the right of clemency with respect to Mariusz Kamiński, the former head of the Anti-Corruption Bureau and a PiS activist convicted in a non-final judgment for overstepping his rights.</p> <p>The Supreme Court issued a resolution in which it held that the President may only pardon people who have been validly convicted,</p>	<p>The Constitutional Tribunal initiated proceedings on the competence dispute, as a result of which the Supreme Court had to suspend the proceedings in Mariusz Kamiński's case on 1 August 2017. The Constitutional Tribunal has not examined the case to</p>

	<p>while the application of the right of clemency before the date of validity of the judgment has no procedural effect.</p> <p>The Marshal of the Sejm refers a motion to the Constitutional Tribunal to settle a competence dispute.</p> <p>The Prosecutor General files a motion with the Constitutional Tribunal regarding the regulations enabling the Supreme Court to examine this matter.</p>	<p>this day; the proceedings have been suspended for over 4 years (Kpt 1/17).</p> <p>In response to the Prosecutor General's motion, on 17 July 2018, the Constitutional Tribunal held that the President had the right to pardon Mariusz Kamiński even before the court's final judgment.</p>
	<p>Exercise of the President's right of clemency</p> <p>- Mariusz Kamiński, former head of the Anti-Corruption Bureau and a PiS activist, was sentenced in a non-final judgment to three years in prison and a ten-year ban on holding public office for overstepping his rights. The court also sentenced three other officials of the bureau. An appeal was filed with the court of the second instance against the judgment. President Andrzej Duda pardoned Kamiński and the other convicts before the judgment became final. In view of the clemency, the Regional Court overturned the contested judgment and discontinued the criminal proceedings against all defendants. The auxiliary prosecutors filed a cassation appeal with the Supreme Court.</p> <p>- On 31 May 2017, the Supreme Court, consisting of 7 judges, issued a resolution stating that the right of clemency may only be exercised with respect to people whose guilt has been established by a final court judgment, and that the application of the right of clemency by the President before the date of the final verdict has no procedural effect (ref. I KZP 4/17).</p> <p>The Marshal of the Sejm refers a motion to the Constitutional Tribunal to settle a competence dispute.</p> <p>The Prosecutor General files a motion with the Constitutional Tribunal regarding the regulations enabling the Supreme Court to examine this matter.</p>	<p>(Kpt 1/17) The Constitutional Tribunal initiated proceedings on a competency dispute between the Supreme Court and the President as a result of which the Supreme Court suspended the proceedings in the case of Mariusz Kamiński and others on 1 August 2017. The Constitutional Tribunal has not examined the case to this day; the proceedings have been suspended for over 4 years.</p> <p>(K 9/17) In response to the Prosecutor General's motion, on 17 July 2018, the Constitutional Tribunal issued a judgment on 17 July 2018 in which it ruled that the President had the right to pardon Mariusz Kamiński even before the final court judgment.</p>
4	<p>The constitutionality of the new National Council of the Judiciary, elected in whole by the Sejm of the Republic of Poland, and the expiry of the term of office of the NCJ to date is challenged.</p> <p>The neo-NCJ files a motion with the Constitutional Tribunal</p> <p>The candidates to the Supreme Court appeal against the resolutions of the NCJ questioning its independence and the Supreme Administrative Court suspends the implementation of the resolutions of the neo-NCJ</p> <p>The neo-NCJ files a motion with the Constitutional Tribunal</p> <p>Election of members of the NCJ by the Polish Sejm – self-legalisation of the NCJ</p> <p>- PiS amended the Act on the NCJ and changed the way in which the judges of a part of the NCJ are selected so that instead of being elected by the judiciary, the judges of the NCJ are elected by the Sejm. The Act simultaneously shortened the term of office of the judicial part of the NCJ so as to be able to elect a new NCJ in its entirety on its own.</p> <p>- The amended legislation started to be challenged as being unconstitutional, while the membership of the new NCJ was assessed as being deprived of independence from other authorities.</p> <p>- on 22 November 2018, the new NCJ filed a motion with the Constitutional Tribunal requesting it to examine the constitutionality of certain provisions of the amended Act on the NCJ – including the provision specifying the method of electing members of the Council (Article 9a)</p> <p>- an identical motion was filed several months later by a group of PiS senators.</p>	<p>On 25 March 2019, the Constitutional Tribunal concludes that the new rules for electing judges to the NCJ are constitutional. It simultaneously declares the provision allowing for the possibility to file appeals against resolutions of the NCJ in recruitments with the Supreme Court to be unconstitutional.</p> <p>(K 12/18) The Constitutional Tribunal issued a judgment on 25 March 2019 in which it held that Article 9a specifying the method of selecting the judicial part of the NCJ is constitutional.</p>

	<p>Admissibility of appeals against resolutions of the NCJ selecting candidates for the Supreme Court</p> <ul style="list-style-type: none"> - PiS amended the provisions of the Act on the NCJ in such a way that a resolution presenting candidates for the office of judge of the Supreme Court to the President becomes final if it is not challenged by all participants of the proceedings. - The Supreme Court candidates who were not presented by the neo-NCJ for appointment by the President appealed against these decisions to the Supreme Administrative Court. In response to these appeals, the Supreme Administrative Court applied an interim measure and suspended the execution of the resolutions of the neo-NCJ regarding the appointment of judges to the Supreme Court in the parts with respect to which the appeals were filed. - The Polish President ignored the Supreme Administrative Court's interim measure and appointed 37 people to the Supreme Court. - The Supreme Administrative Court submitted requests for preliminary rulings to the CJEU on 21 November 2018 regarding, among other things, the right of candidates not nominated by the NCJ for appointment to the offices of Supreme Court judges to appeal and the independence of the neo-NCJ. - the new NCJ filed a motion with the Constitutional Tribunal on 22 November 2018 requesting it to examine the constitutionality of certain provisions of the amended Act on the NCJ – including the provision allowing for an appeal to be filed against its decision to the Supreme Court and the Supreme Administrative Court (Article 44, Para. 1A) 	<p>(K 12/18) The Constitutional Tribunal issued a judgment on 25 March 2019 in which it held that Article 44, para. 1a providing for the ability to appeal against resolutions of the NCJ in recruitments to the Supreme Court is unconstitutional.</p> <p>The effect of this judgment was the liquidation of the judicial route in recruitments to judicial positions in the Supreme Court.</p> <p>- as a consequence of this judgment, the Sejm passed an amendment to the Act on the National Council of the Judiciary in April 2019, which, among other things, completely ruled out the possibility of appealing against resolutions of the NCJ with motions to appoint Supreme Court judges. Furthermore, in accordance with the amendment, proceedings in cases of appeals against resolutions of the NCJ in individual cases regarding appointment to the office of judge of the Supreme Court, which were initiated but had not been completed by the date on which it enters into force, were discontinued by law. This had the objective of discontinuing proceedings before the Supreme Administrative Court in which requests for preliminary rulings were submitted on the independence of the neo-NCJ.</p>
5	<p>The parties to the proceedings file motions with the ordinary courts and the Supreme Court to remove the judges appointed to the office of judge with the participation of the neo-NCJ because of raising the circumstances of the defectiveness of their appointment.</p> <p>Neo-judges from the Civil Chamber of the Supreme Court refer a question to the Constitutional Tribunal</p> <p>The exclusion of a judge for referring to circumstances of defectiveness of the appointment of a judge by the Polish President on the motion of the NCJ.</p> <ul style="list-style-type: none"> - Numerous motions were submitted to exclude judges appointed on the motion of the neo-NCJ from adjudication in connection with the questioning of the legality of appointments of neo-judges to the Supreme Court. - On 25 March 2019, the neo-judges from the Civil Chamber submitted a legal question to the Constitutional Tribunal as to whether it is constitutional to submit motions to remove a judge in civil proceedings (Article 49 § 1 of the Civil Procedures Code) by referring to the circumstance that the appointment of a judge by the Polish President on the motion of the NCJ is defective. 	<p>The Constitutional Tribunal declared a provision of the Civil Procedures Code allowing motions for exclusion to be filed if a party refers in the motion to the defectiveness of the appointment of a judge by the Polish President on the motion of the neo-NCJ to be unconstitutional on 2 June 2020.</p> <p>(P 13/19) The Constitutional Tribunal ruled on 2 June 2020 that Article 49 § 1 of the Civil Procedures Code, to the extent to which it permits consideration of a motion to remove a judge for the defectiveness of his appointment by the Polish President on the motion of the National Council of the Judiciary, is inconsistent with the Polish Constitution.</p>
6	<p>Poland's strict regulations on the termination of pregnancy allow abortions to be conducted in cases where a severe foetal defect or an incurable life-threatening disease has been established.</p> <p>A group of MPs file a motion to the Constitutional Tribunal</p> <p>Admissibility of abortion in the case of a serious defect of the foetus or an incurable life-threatening disease</p> <ul style="list-style-type: none"> - A group of MPs requested that certain provisions of the Act on family planning, the protection of the human foetus and conditions for the admissibility of the termination of a pregnancy of 7 January 1993 be declared unconstitutional, including Article 4a, para. 1, item 2, permitting the termination of pregnancy in the case where 'prenatal tests or other medical indications indicate a high probability of severe and irreversible impairment of the foetus or an incurable life-threatening disease'. 	<p>On 22 October 2020, the Constitutional Tribunal declared the premise of abortion in the case of a severe foetal defect or an incurable life-threatening disease unconstitutional.</p> <p>(K 1/20) The Constitutional Tribunal issued a judgement on 22 October 2020 in which it held that Article 4a, para. 1, item 2 is inconsistent with the Polish Constitution, or in other words, it ruled that abortion in the case of finding a severe defect of the foetus or an incurable life-threatening disease is in breach of the Constitution.</p>

<p>7</p>	<p>The First President of the Supreme Court requests that the membership of the three combined Chambers, namely the Civil, Criminal and Labour and Social Insurance Chambers of the Supreme Court pass a resolution regarding, among other things, the correctness of the composition of the courts with the participation of people nominated with the involvement of the neo-NCJ.</p> <p>The Marshal of the Sejm refers a motion to the Constitutional Tribunal to settle a competence dispute</p> <p>Resolution of the three combined chambers of the Supreme Court (blocking attempt)</p> <p>- After the CJEU judgment of 19 November 2019. (A.K. v. National Council of the Judiciary and CP and DO v. Supreme Court, Joined Cases C-585/18, C-624/18 and C-625/18), the Supreme Court issued a judgment on 5 December 2019 in which it held that the Disciplinary Chamber is not a court in the meaning of EU and national law and that the NCJ is not an independent body.</p> <p>- on 15 January 2020, the First President of the Supreme Court addressed the combined Chambers, namely the Civil, Criminal and Labour and Social Security Chambers of the Supreme Court, requesting the passage of a resolution on the correctness of the membership of the court with the participation of a person nominated by the neo-NCJ.</p> <p>- In response to the request, the Supreme Court issued a resolution (BSA I-4110-1/20) on 23 January 2020, from which it arises, among other things, that the Supreme Court, ordinary courts and military courts are incorrectly staffed when their membership includes a person appointed by the neo-NCJ, although this entails various consequences, depending on the level of the court and the date of the decision.</p> <p>The ruling party and its affiliated bodies attempted to block the adoption of the resolution:</p> <p>- on 22 January 2020, in connection with the motion of the First President of the Supreme Court, the Marshal of the Sejm submitted a motion to the Constitutional Tribunal to settle competence disputes between the Sejm of the Republic of Poland and the Supreme Court and between the President of the Republic of Poland and the Supreme Court regarding the competence of the Supreme Court 'to make law-making interpretations of the provisions of the law leading to a change in the normative state regarding the structure and organisation of the judiciary' as well as the competence 'to assess the effectiveness of the appointment of a judge'.</p>	<p>The Constitutional Tribunal first unsuccessfully attempts to block the adoption of the resolution on 22 January 2020 by requesting the First President of the Supreme Court to suspend the proceedings.</p> <p>Then, after the Supreme Court passes a resolution which is unfavourable for the authorities, it suspends the application of that resolution on 28 January 2020.</p> <p>(Kpt 1/20) On an alleged competence dispute:</p> <p>Attempt to prevent the adoption of the resolution:</p> <p>- on 22 January 2020, the President of the Constitutional Tribunal sent a letter to the First President of the Supreme Court informing her that proceedings had been initiated regarding a competence dispute, so that the cases encompassed by the request of the Marshal of the Sejm were to be suspended. The First President of the Supreme Court replied that there is no competence dispute, as no proceedings encompassed by the motion of the Marshal of the Sejm were pending before the Supreme Court.</p> <p>Attempt to block the effects of the resolution:</p> <p>- on 28 January 2020, the Constitutional Tribunal issued a decision by which, among other things, it suspended the application of the resolution of the members of the combined Chambers, namely the Civil, Criminal and Labour and Social Insurance Chambers of the Supreme Court of 23 January 2020.</p> <p>On 28 April 2021, the Constitutional Tribunal settles the 'competence dispute' in favour of the President of the Republic of Poland and the Sejm</p>
<p>8</p>	<p>The Supreme Court, in the membership of the combined Chambers, namely the Civil, Criminal and Labour and Social Insurance Chambers, issues a resolution (BSA I-4110-1/20) on 23 January 2020, from which it arises, among other things, that the Supreme Court, ordinary courts and military courts are incorrectly staffed when their membership includes a person selected by the neo-NCJ, although this entails various consequences depending on the level of the court and the date of the decision.</p> <p>The Polish Prime Minister submits a request to the Constitutional Tribunal to examine the constitutionality of this resolution</p> <p>Resolution of the three combined chambers of the Supreme Court (neutralisation)</p> <p>- On 23 January 2020, the combined Chambers of the Supreme Court, namely the Civil, Criminal and Labour and Social Insurance Chambers of the Supreme Court, issued a resolution (BSA I-4110-1/20), from which it arises, among other things, that the Supreme Court, ordinary courts and military courts are incorrectly staffed when their membership includes a person appointed by the neo-NCJ, although this entails various consequences, depending on the level of the court and the date of the decision.</p>	<p>On 20 April 2020, the Constitutional Tribunal finds that the resolution of the three Chambers of the Supreme Court of 23 January 2020 is incompatible with the Constitution of the Republic of Poland, the EU Treaty and the European Convention on Human Rights.</p> <p>(U 2/20) On 20 April 2020, the Constitutional Tribunal issued a judgment in which it held that the resolution of the combined Chambers, namely the Civil, Criminal and Labour and Social Insurance Chambers of the Supreme Court of 23 January 2020 is incompatible with the Constitution of the Republic of Poland, the EU Treaty and the European Convention on Human Rights.</p>

	<p>- On 24 February 2020, the Polish Prime Minister sent a request to the Constitutional Tribunal to examine the compatibility of the resolution of the combined Chambers, namely the Civil, Criminal and Labour and Social Insurance Chambers of the Supreme Court with the Polish Constitution.</p>	
	<p>Resolution of the three combined chambers of the Supreme Court</p> <p>(a further example of the instrumental treatment of the Constitutional Tribunal in matters that are inconvenient for political authority)</p> <p>- on 27 January 2020, the Polish President submitted a request to the Constitutional Tribunal to examine the constitutionality of a number of provisions of the Civil Procedures Code, the Criminal Procedures Code and the Act on the Supreme Court, to the extent to which they refer to such an understanding of these provisions as adopted in the resolution of the membership of the joint Chambers, namely the Civil, Criminal and Labour and Social Insurance Chambers of the Supreme Court of 23 January 2020.</p>	<p>(K 2/20) On 20 December 2020, the Constitutional Tribunal discontinued the proceedings following the judgment of 20 April 2020 in case U 2/20.</p>
9	<p>PiS is unable to elect a new Ombudsman, so, after the expiry of the term of office, the duties of the Ombudsman continue to be performed by Adam Bodnar, the Ombudsman to date, who repeatedly intervened in the cases of citizens whose rights had been breached.</p> <p>A group of PiS MPs files a motion with the Constitutional Tribunal regarding the continuation of the Ombudsman's term of office</p>	<p>On 15 April 2021, the Constitutional Tribunal declared the provision enabling the Ombudsman to operate after the end of his term of office until his successor takes office unconstitutional.</p>
	<p>The performance by the Ombudsman of his duties after the end of his term of office</p> <p>- Adam Bodnar's five-year term of office as Ombudsman ended on 9 September 2020. PiS had not elected his successor by that date, and therefore, according to the law, the Ombudsman's duties continue to be performed by Adam Bodnar, who had repeatedly intervened in cases of citizens whose rights had been violated by the political authority, until the election of his successor.</p> <p>On 15 September 2020, a group of PiS MPs files a motion with the Constitutional Tribunal to declare the provisions of the Act on the Ombudsman enabling the Ombudsman to operate after the end of his term of office until his successor takes office unconstitutional.</p>	<p>(K 20/20) On 15 April 2021, the Constitutional Tribunal ruled that the provision of the Act on the Ombudsman allowing the former Ombudsman to operate after the end of his term of office until a new Ombudsman takes office is unconstitutional.</p>
10	<p>The Court of Justice of the European Union orders interim measures against Poland by which it suspends, among other things, the application of provisions granting the Disciplinary Chamber operating at the Supreme Court the competence to hear disciplinary cases of judges.</p> <p>The Disciplinary Chamber refers questions to the Constitutional Tribunal on the effectiveness of the CJEU's interim measures</p>	<p>On 14 July 2021, the Constitutional Tribunal concludes that the obligation to implement the interim measures related to the shape of the structure and functioning of the constitutional bodies of judicial authority is inconsistent with the Constitution of the Republic of Poland and in this respect is not covered by the principles of primacy and direct application.</p>
	<p>Interim measures of the CJEU, which froze the activity of the Disciplinary Chamber</p> <p>- On 8 April 2020, on the motion of the European Commission, the CJEU suspended, among other things, the application of certain provisions of the Act on the Supreme Court constituting the basis of the jurisdiction of the Disciplinary Chamber in disciplinary cases of judges.</p> <p>- On 9 April 2020, the Disciplinary Chamber referred a legal question to the Constitutional Tribunal on the constitutionality of the second sentence of Article 4(3) of the Treaty on European Union ('<i>The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.</i>') in connection with Article 279 of the Treaty on the Functioning of the European Union ('<i>The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.</i>') to the extent to which it has the effect of obliging a Member State of the European Union to implement interim measures relating to the structure and functioning of the constitutional bodies of that State's judicial authority.</p>	<p>(P 7/20) On 14 July 2021, the Constitutional Tribunal issued a judgment in which it held that the second sentence of Article 4(3) of the Treaty on European Union, in connection with Article 279 of the Treaty on the Functioning of the European Union to the extent to which the Court of Justice of the European Union imposes obligations on the Republic of Poland, as a Member State of the European Union, <i>ultra vires</i>, by issuing interim measures relating to the structure and jurisdiction of the Polish courts and the procedure before the Polish courts, is incompatible with the Constitution of the Republic of Poland and, to that extent, is not covered by the principles of primacy and direct application specified in Article 91(1)-(3) of the Constitution.</p>

11	<p>The CJEU issues a judgment in which it allows national laws to be disregarded and EU law to be applied when assessing the correctness of court nomination procedures and, if a gross breach of the law is found to have taken place in the course of such a procedure, the acknowledgement that the court formed in such a way is not independent and impartial.</p> <p>The Prime Minister of the Republic of Poland refers a motion to the Constitutional Tribunal to examine the constitutionality of certain provisions of the Treaty on European Union</p>	<p>On 7 October 2021, the Constitutional Tribunal declared selected provisions of the EU Treaty unconstitutional, contests the principle of loyal cooperation and the principle of primacy of EU law over national law, which leads to the prevention of Polish courts from applying the interpretation of EU law established by the Court of Justice of the EU.</p>
	<p>Polish courts apply EU law in accordance with the interpretation of the CJEU in cases related to the rule of law crisis in Poland</p> <p>- On 29 March 2021, Prime Minister Mateusz Morawiecki refers a motion to the Constitutional Tribunal to examine the constitutionality of certain provisions of the Treaty on European Union.</p> <p>- This was, among other things, a reaction to the judgment of the CJEU of 2 March 2021 regarding the questions of the Supreme Administrative Court (C-824/18, A.B. and others v. National Council of the Judiciary), but also to other CJEU judgments enabling national laws to be disregarded and EU law to be applied when assessing the correctness of court nomination procedures and declaring courts to be deprived of the attribute of independence and impartiality if it is established that a gross breach of the law took place during the procedure.</p>	<p>(K 3/21) The Constitutional Tribunal issued a judgment on 7 October 2021 in which it held that selected provisions of the Treaty on European Union are in conflict with the Polish Constitution.</p> <p>The Constitutional Tribunal questioned the principle of loyal cooperation and the principle of primacy of EU law over national law, and the judgment has the effect of preventing Polish courts from applying the interpretation of EU laws established by the Court of Justice of the EU.</p>
12	<p>The European Court of Human Rights ruled that the decision of the Constitutional Tribunal with the participation of a person elected to a position that was already occupied in the Constitutional Tribunal (a stand-in judge) is in breach of the ECHR, while the body with the participation of such a person does not meet the requirement of a 'court established by law' as set out in Article 6 of the Convention.</p> <p>The Prosecutor General files a request with the Constitutional Tribunal on the constitutionality of a selected provision of the ECHR.</p>	<p>On 24 November 2021, the Constitutional Tribunal declares the provision of the ECHR, which guarantees everyone the right to a fair trial, is inconsistent with the Polish Constitution as regards proceedings before the Constitutional Tribunal.</p>
	<p>The ECtHR questioned the legality of the membership of the Constitutional Tribunal with the involvement of stand-in judges</p> <p>- On 27 July 2021, the Prosecutor General filed a motion with the Constitutional Tribunal to declare the first sentence of Article 6(1) of the European Convention on Human Rights (<i>'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'</i>) unconstitutional to the extent to which it allows the ECtHR to assess the legality of the election of judges of the Constitutional Tribunal.</p> <p>- The motion is a consequence of the judgment of the ECtHR of 7 May 2021 in the case of Xero Flor v. Poland (application 4907/18), in which the Court ruled that the decision of the Constitutional Tribunal with the participation of a person elected to a position that is already occupied in the Constitutional Tribunal (a stand-in judge) breaches the ECHR with regard to the right to a court, while the body with his participation does not meet the requirement of the ECHR of a 'tribunal established by law'.</p>	<p>(K 6/21) On 24 November 24 2021, the Constitutional Tribunal issued a judgment in which it held that Art. 6 (3) of the European Convention on Human Rights, which guarantees everyone the right to a fair trial, is inconsistent with the Constitution of the Republic of Poland as regards proceedings before the Constitutional Tribunal.</p> <p>The Constitutional Tribunal also ruled that the European Court of Human Rights does not have the right to assess the legality of the appointment of judges to the Constitutional Tribunal.</p>

